

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

Served: July 22, 1993

FAA Order No. 93-25

In the Matter of:

MICHAEL JOHN COSTELLO

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) Docket No. CP89WP0351
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PETITION TO RECONSIDER DISMISSED

Respondent Michael John Costello has petitioned the Administrator to reconsider his order denying Respondent's request for a reduction in his civil penalty. In an order served on March 25, 1993, Acting Administrator Joseph Del Balzo: (1) affirmed the law judge's decision finding that Respondent violated the regulations; and (2) rejected Respondent's request to reduce the civil penalty from \$6,000 to \$1,000. In the Matter of Costello, FAA Order No. 93-10 (March 25, 1993).

Under the Rules of Practice, a petition for reconsideration must be filed within 30 days of service of the Administrator's final decision and order. 14 C.F.R. § 13.234(a). The Rules of Practice also grant a party served with an order by mail--as Respondent was in this case--5 additional days to file a response. 14 C.F.R. § 13.211(e). Therefore, Respondent had 35 days from March 25, 1993, the service date of the Administrator's order, to file his petition for reconsideration, or until April 29, 1993. Respondent did not, however, file his petition for reconsideration until May 14, 1993.

On June 1, 1993, Complainant Federal Aviation Administration filed a "Motion to Dismiss Petition for Reconsideration." Complainant cited the untimeliness of Respondent's petition for reconsideration, and noted accurately that Respondent had not asserted any good cause that would excuse the untimeliness of his petition. In response,

Respondent argues that his petition for reconsideration was indeed timely because it was filed within 35 days of the date he signed the return receipt for the Administrator's order, which was sent certified mail, return receipt requested.

Respondent's argument is rejected. The applicable regulation provides, in relevant part, as follows:

A party shall file a petition to reconsider or modify with the FAA decisionmaker not later than 30 days after service of the FAA decisionmaker's final decision and order on appeal and shall serve a copy of the petition on each party.

14 C.F.R. § 13.234(a) (emphasis added). The regulation does not state that the petition for reconsideration shall be filed not later than 30 days after its receipt. Under the Rules of Practice, when a document is mailed, the service date is not the date of receipt, but the mailing date. See 14 C.F.R. § 13.211(d), which provides that the date of service shall be "the date of personal delivery; or, if mailed, the mailing date shown on the certificate of service, the date shown on the postmark if there is no certificate of service, or other mailing date shown by other evidence if there is no certificate of service or postmark." (Emphasis added.)

Moreover, the return receipt for the Administrator's March 25, 1993, order indicates that Respondent received it on April 15, 1993. Thus, he had 2 weeks from the date of receipt to file his petition for reconsideration before the deadline expired on April 29, 1993. If he needed additional time, he should have requested an extension before the deadline expired.

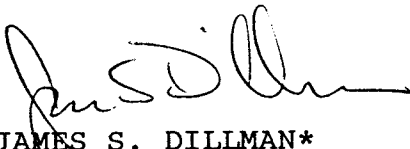
Respondent also asks the Administrator to toll the time for requesting judicial review of the Administrator's decision. The particular statutory provision in the Federal Aviation Act which provides for judicial review of orders issued by the Administrator, 49 U.S.C. App. § 1486(a), provides in relevant part as follows:

Any order, affirmative or negative, issued by the ... Administrator under this Act ... shall be subject to review by the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia upon petition, filed within sixty days after the entry of such order, by any person disclosing a substantial interest in such order. After the expiration of such sixty days a petition may be filed only by leave of court upon a showing of reasonable grounds for failure to file the petition theretofore.

(Emphasis added.) A request for additional time for filing a petition for review should be filed with the particular United States Court of Appeals whose review is sought. The Administrator does not have the authority to extend the time for filing a petition for review with a United States Court of Appeals.

BASED ON THE FOREGOING, Respondent's petition for reconsideration is dismissed due to its untimeliness, for which Respondent has failed to show good cause.

JOSEPH DEL BALZO
Acting Administrator
Federal Aviation Administration



JAMES S. DILLMAN*
Assistant Chief Counsel

Issued this 22nd day of July, 1993.

* Issued under authority delegated to the Chief Counsel and the Assistant Chief Counsel for Litigation by Memorandum dated October 27, 1992, under 49 U.S.C. § 322(b) and 14 C.F.R. § 13.202. See 57 Fed. Reg. 58,280 (1992).